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# FACTS

DISCLOSED IN SOME

## UNREPORTED CASES.

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PUBLISHED FOR THE PUBLIC GOOD,

BY A VICTIM.

(A Gogy)

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"In England every man's house is his castle,  
"not that it is surrounded with walls  
"and battlements; it may be a straw  
"built shed; every wind of heaven may  
"enter it, but the King cannot, the King  
"dare not."

LORD CHATHAM

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*Gregg, A.*

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## PREFACE.

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The French Law, as it stood in France before the Revolution, obtains in the Province now called Quebec, and in France at that period, the Parliaments were Courts of Law.

On the first Wednesday after the great vacations, the French Parliaments held a full session. The deficiencies in the administration of justice, and particularly in the course of business, were then discussed, and measures were taken for correcting such of those evils as were then apparent. The first President and the Crown Advocate were alternately bound to report to the meeting. From the day of assembling, their speeches were called mercurials—this name was also given to a reproof or rebuke—because the members on this day received their reprimands.

This was a sort of periodical moral purification. Here, after the rising of the Court, we are content with opening the windows and admitting fresh air.

In France the aristocracy over-topped the Judges. Here, however narrow the intellect, bad the habits, scanty the information, vulgar the manners, capricious the conduct, overbearing the deportment of a Judge, however incapable, incompetent, unworthy or vicious, he has no social superior. Every Judge is absolutely and literally irresponsible; the difficulties and embarrassments impeding the progress of every impeachment of any one of that class proves that. All Judges may commit with impunity all kinds of offences, even to being drunk upon the Bench in open Court. Judge Aylwin has proved that.

Dukes, Marquises and every member of the aristocracy in France despised what they called “*La noblesse de la Robe.*”

Hence it must have been comparatively easy to bring a French Judge to justice and to inflict on him condign punishment. This was known, and the Judges feeling that they would be unceremoniously dealt with (a sensation unknown to Canadian Judges) were always more or less on their guard. In France, too, the mercurials above mentioned tended to excite in them a salutary dread of exposure.

Here the Judges have pecuniary independence, official power, social superiority. They have also in their hands the fortunes, the lives and reputations of every member of the community. It is by no means surprising that their heads should appear to be turned. They are free from official checks, exempt from mercurials, nor dare any one call them to account: on the contrary, as arbitrators of the fate of all their fellow-men they are feared and treated with affected deference even when held, as often happens, in absolute execration, nor have they any inducement to behave well, for they are sure of impunity whatever the extent of their misconduct.

They evidently calculate on the mis-application to them of an English rule. No English Judge decides upon the fact. He leaves the fact to the jury, but his previous exposition is public; he deals orally with the evidence that the jury has heard—as he has—when elicited, and upon which they, not he, are to decide. Nor can any English Judge have been brought within the range of those demoralizing influences which corrupt and taint for life so many Attorneys. Now a Canadian Judge must have been an Attorney; however detestable his conduct as an Attorney, it forms no obstacle to his promotion. He is also Judge of the fact with which he deals, *not in public*, but in the privacy of his study, in the shape of written depositions. Of these he may well form, as many do form, a mistaken estimate, even if he should appear to have perused them, which is not always clear. He may or he may not read the evidence, and that is a question into which no inquiry can ever be instituted.

The great, the deserved homage which is offered to Judges in England is due to circumstances impossible, or at least unknown, in the Province of Quebec. To evince for a Judge of this Province the sort of respect offered to an English Judge, to erect bulwarks for his protection, to multiply impediments to prevent his being accused, to embarrass, impede and wrong his victims when they seek legal redress, is simply to offer a premium for misconduct, to embolden them in their career of wrong-doing, to offer impunity to crime.

Then we have seen how little in the selection of candidates fitness or worth are taken into consideration. One who needs a place in Parliament and has the power to pay for it at the public expense, *by the gift of a Judgeship*, is always sure to find a member ready to make an exchange. Thus a fellow who, by enormous lying and a recourse to evil practices, including every description of meanness wins his way into the house, may be forthwith translated to the judgment seat.

Considering the motives by which Ministers have been induced to elevate divers individuals to rank, power and consequent fortune, one cannot avoid the intrusion of strange misgivings in relation to some at least of the recipients of the so-called Royal favor. Having been frightfully oppressed, and knowing, too, much of the grounds upon which Judges have been named, I have deemed a full exposition of the mode in which the law is administered likely to be conducive to the public good. This is the origin of the details submitted in the following pages. A light suddenly exhibited to a prisoner confined in a dark dungeon has not the effect of enabling him *instantly* to distinguish objects. So here there are no traditions relative to trial by Jury ; and the prejudice against that mode of administering justice is so strong that before its adoption the present century may pass away : Yet is it the only remedy for the evils entailed on the community by the concentration of so much power in the hands of the

judiciary. Though this remark may expose me to much aminadversion, the advantages which, in some respects at least, must attend the change that I recommend, ought to be evident to the meanest capacity.

1. Lawsuits will generally be brought to a termination within one-fourth or one-fifth of the time which it is now necessary to devote to them.

2. The expense incident to the attendance of witnesses will be reduced by nine-tenths, and perjury, now so common, will be (if not impossible) always susceptible of detection.

3. The number of the Judges can be diminished by one-half, and the remaining half, instead of exhibiting symptoms of exhaustion or lassitude, will come to the Bench fresh, with intellects brightened and spirits exhilarated by the hope of manifesting and of infusing virtue.

4. The grounds of the decision will be no longer a mystery, nor will it be in the power of the Judge to conceal his real opinion. Publicity will ensure rectitude.

5. It will, in the supposed event, behove the Government to select for the Judicial Bench gentlemen of the highest moral courage and worth, with commensurate capacity. To instruct, to enlighten, to guide Juries, to enable them thereby honorably and efficiently to perform their part in the administration of justice, to control them, and to apply the legal remedy where they fail, are not tasks that every political hack, every donkey, can perform.

But as "the deaf adder heareth not the voice of the charmer," so ignorance and prejudice that can have no conception of the legitimate and beneficial power and influence of able Judges over Jurors, can form no estimate of the consequences which will most assuredly follow the adoption of trial by Jury: nor can the evils of the present system be more vividly illustrated than by the exhibition of its effects upon the conduct of a gentleman in private life so exemplary and generally courteous as Chief Justice Meredith.



My impression of the existence of a very serious evil has been confirmed by a recent decision of the judicial Committee of the Privy Council. The Bank of Upper Canada brought an action against the late Mr. Bradshaw. It was conducted in the Superior Court (so called because it is the *Inferior* Court) by the Counsel who had advised the Bank to pursue that course. There the Bank was unsuccessful and on Appeal to the Queen's Bench failed again. The case was then brought before the Privy Council. There the same learned Counsel appeared in support of the Appeal. He was patiently heard throughout but when he stopped the Lords Justices intimated that they did not deem it necessary to hear the Counsel for the Respondent Mrs. Widow Bradshaw and they forthwith confirmed the judgment of the Canadian Courts.

In my opinion the fact proves that we need in this country the assistance of another class of Counsel learned in the law. We require Counsel who must be *held, bound and sworn* to advise and to *perform no other part whatever*. Such advisers would have no interest whatever to warp or disturb their judgment. It is not so now, for the Attorney who advises the bringing of a suit invariably profits largely by its being brought.

Without intending to animadvert on the learned Counsel in question, I venture to suggest that this sort of temptation, a temptation of daily occurrence is too much for human nature, The loss and the anguish suffered by the above named then recently bereaved lady must excite general sympathy but mine is not free from a spice of selfishness—for could my suggestion have been acted upon by my enemy, I should have been spared upwards seventeen years of torture.

*Facts disclosed in an unreported case.*

GRENIER,

PLAINTIFF.

vs.

GUGY,

DEFENDANT.

It is necessary to premise that, before the occurrences which I now propose to bring under the notice of the community, I had been in the Circuit Court (*non-appellable* side) condemned to pay a small sum to the Plaintiff. It was, I maintain, an unjust condemnation ; yet in every-day life one has frequently to choose between the least of two evils, and, in one word, it behoved me to pay the amount. As the Attorney of my adversary Brown, Monsieur Bossé, conducted the case for the Plaintiff, no hope of any kind of indulgence could be entertained, and I made every possible exertion to obtain the means to pay. But all my goods and chattels having been previously seized by my above-named adversary, I could not *then* raise the amount by selling a horse, or even a cow. It is quite true that I was entitled to thirty times the amount, or more—as costs allowed by the tariff in cases in which I had successfully defended myself when sued by my adversary Brown. But certain Judges had taken it into their heads that it was consistent with justice to deprive me of all compensation for my labour in the exercise of the right of self-defence, and they *exmero motu*—quite spontaneously—decided that in several cases in which I had been attacked, and had successfully defended myself, I should not be allowed any fees. Having explained this in a pamphlet on the

“ Beauties of the Law” I shall not now dwell on the subject : suffice it to say, that I was then very, very poor and absolutely wretched—reduced indeed to a state bordering on despair.

This condition, I admit, was not caused by my mere destitution—but the conduct of the Judges was well calculated to produce alarm, affliction, and despondency. It will scarcely be believed, I fear indeed that in despite of my affirmation it may be doubted, that they went so far as in one Judgment to declare that “ *by law and practice no fees can be allowed to Counsel and Attorneys in cases in which they act as Attorneys of Record in the cause.*”

They so decided *against me*, they so acted *against me individually, refusing me fees* in a suit in which I had “ *acted as Attorney of Record in the cause,*” while at the very date of that decision they were daily, if not hourly, allowing fees to other Attorneys, and actually, by the terms of the *very* Judgment which I have herein above quoted, they granted fees to Messieurs Parkin and Pentland, *who had acted in that very cause* as the Attorneys of my enemy Brown, which fees *they condemned me to pay !\**

Every generous man will feel that such decisions tended to excite in my mind the most painful—not to say the most dangerous—reflections. Mr. Justice Mondelet, it is true, honestly refused to participate in the act, but it was the result of the capacity, learning and sense of justice of Messieurs Aylwin, Badgley and Berthelot.†

At this juncture, then, when but for that benevolent baker, McCorkell, I should have wanted bread, Monsieur Bossé in endeavouring to enforce the above-mentioned little Judgment obtained from Chief Justice Meredith the underwritten order, copied in *extenso*.

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\* On my appeal to Her Majesty the Queen, this judgment was reversed at a cost (a loss) to me of about \$1000. This subject may be hereafter referred to.

† I have not included Judge Meredith, yet according to the Record he appears to have concurred.

PROVINCE DE QUEBEC, }  
DISTRICT DE QUEBEC.

COUR DE CIRCUIT.

*Le 4 Mai 1868.*

Présent:—HONORABLE W. C. MEREDITH, CH. J., C. S.

GIGUERE ET GRENIER, ET GRENIER vs. GUGY.

“ La Cour vu la requête de la part de François Xavier Grenier, le demandeur en garantie, alléguant qu’il a été émané en cette cause un bref d’exécution pour faire saisir et vendre les biens du défendeur en garantie, Bartholomew Conrad Augustus Gagy, et que le dit bref d’exécution n’a pu être exécuté, parce que le dit Bartholomew Conrad Gagy a fermé et barré\* ses portes, et a refusé de les ouvrir, en conséquence il est ordonné à l’huissier exploitant en cette cause d’ouvrir les dites portes par les voies nécessaires et avec toutes les forces requises, et ce en présence de deux personnes choisies par lui.

[*Translation.*]

The Court seeing the petition on the part of F. X. Grenier, the Plaintiff en garantie, alleging that a writ of execution to seize and sell the effects of the Defendant en garantie, Bartholomew Conrad Augustus Gagy, hath issued, and that the said writ of execution could not be executed because the said Bartholomew Conrad Augustus Gagy had closed and “*barred*”\* his doors and refused to open them, in consequence it is ordered that the Bailiff charged with the execution of the writ in this cause, do open the said doors by all

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\*This French word “barré,” or barred, signifies “*fermer avec une barre par derrière.*” It means, I submit that my doors were fastened on the inside with one bar or more, so as to prevent their being opened from the outside. But as this fastening or barring must have been, as described, on the *inside*, its existence could not be fairly assumed and affirmed by the Court upon the report of one whose complaint was the result of his inability to enter; nor would a sagacious, discriminating Judge have submitted any man to a great indignity upon such data.

necessary ways and means, and with all the force (or power) requisite, and that he do so in presence of two persons to be chosen by him.

An order was thus given to a Bailiff to break open my door.

It must be admitted that the process, on some occasions and under certain circumstances, is justifiable under the French law. Nor shall I now raise any question arising out of the English constitutional law which, it might be argued, overrides the French Municipal law. There are such things as a conflict of laws ; but, for the sake of argument, I hypothetically admit that my house is not, or on the 4th of May, 1868, was not, my castle. On that day, then, Mr. Chief Justice Meredith ordered a Bailiff to *force* it open, and that *deplano, without any rule to show cause, without any notice* to me, without hearing me, without any affidavit.\*

The Chief Justice, then, must have deemed that the petition amounted to complete proof, and he cites no evidence in its support, nor was there any.

But, as in my opinion he misconducted himself on that occasion, I propose to bring under the public notice the sort of evidence, and all the evidence, upon which he could

\* The Judges are proverbially very independent, and a decided case is not always noticed. Here is one in point :—

II. L. C. Jurist, page 280. *Kemp vs. Kemp*. 30th April, 1858. No. 1536. "Held that a Sheriff's return to a writ of execution, setting forth "that the Defendant has refused to open the door of his dwelling house, "in order that the Sheriff might seize, is only *prima facie* evidence of the "fact, and is not sufficient of itself to justify a condemnation for *contrainte*" or imprisonment.

"This is a rule for a *contrainte par corps* against the Defendant for "refusing to open the door of his dwelling house, in order that the Sheriff "might seize, and is based on the Sheriff's return."

That return was held to be insufficient and *proof of the fact was ordered*.

In the case thus cited the return of the Sheriff (a much higher officer and one not so likely to make a false return as a Bailiff) was not acted upon, and *proof was required*.

possibly have relied to support the order and Judgment hereinabove cited.

According to the terms of the Judgment so cited, the evidence consisted of "La Requête," the petition; for had the Judge founded his Judgment on any evidence he would have referred to it, or he ought to have done so.

Now, the Requête petition was not supported by an oath. The Code (Article 472) makes it imperative on all Judges to assign the reasons of their Judgments, and Chief Justice Meredith knowing this law—being, of course, disposed to obey it—has based his Judgment upon his view of the petition, as is shown by the words "Vu la requête," and so forth.

This is his own statement of the grounds of the Judgment, and, believing him, I charge him with a violation of the law and of my rights.

Were I to stop here, however, he would, or might, or—as has *already occurred*—some lawyer, on his behalf, would assure a "discriminating public" that I had suppressed an important fact, namely, the Bailiff's return endorsed on the writ. Now, though the petition on which the order purports to be founded was not based on a solemn affirmation, it is true that the Bailiff's return, to which the Judge has *not* referred, was made on *his oath of office*.

Assuming, then, that the Chief Justice founded his Judgment upon grounds or reasons which he did not assign, I shall now advert to the Bailiff's return. But to be perfectly fair to all parties, including myself, I shall quote the return, and the whole return:—

[*Translation.*]

I, the undersigned sworn Bailiff of the Superior Court, for the Province of Quebec, named for the District of Quebec, upon my oath of office certify, that on the second day of May instant, between six and seven o'clock in the afternoon, I repaired to the domicile of B. C. A. Gagy, the Defendant

therein named, to execute the present writ, and that I found the door thereof locked. I knocked several times, and could not cause the said door to be re-opened, although the Defendant was in his house, in consequence whereof I could not execute the said writ.

Fee for transport, 2s. 6d. ; carriage, 4s. ; bridge, 1s. ; total, 7s. 6d.

D. BLANCHET,

Quebec, 4th May, 1868.

*B. S. C.*

Determined to assert nothing from myself I submit that the Bailiff charges four shillings for travel and one shilling for toll over a bridge. It follows that he travelled four miles from the Court house, crossing a bridge, to reach my residence. He certifies, too, that he did so reach my residence, domicile, between *six* and *seven* o'clock in the afternoon.

The hour is important, for after seven of the clock in the afternoon it is not lawful for a Bailiff to seize. Code, Art. 574.

But endorsed on the same writ, and in juxtaposition with that return, was and is another return conceived in the following terms :—

[*Translation.*]

I, the undersigned sworn Bailiff of the Superior Court, for the Province of Quebec, residing in the Town of Lévis, certify, upon my oath of office, that on the second day of May instant, between five and six o'clock in the afternoon, I repaired expressly to the domicile of the Defendant to execute the present writ, where being and speaking to himself, I asked him if he had any goods and chattels belonging to him which he could offer me for seizure by me, to which he replied that he had nothing ; consequently, I could not execute the present writ.

Fee for transport, 2s. 6d. ; carriage, 4s. ; bridge, 1s. ; return, 1s. ; total, 8s. 6d.

D. BLANCHET,

Quebec, 2nd May, 1868.

*B. S. C.*

No intelligent person can possibly read either of these returns without seeing the other; hence the Chief Justice must have seen that on the afternoon of the same second of May, 1868, the same Bailiff had previously been at my domicile. It is true that on this occasion the Bailiff certifies that he went to my domicile between five and six o'clock. He must then have returned to town, travelling four miles not at speed, for he could not guess that he would be sent back *on the same evening*. He must have crossed the bridge slowly, climbed up the hill, have entered at one of the five city gates (not quickly, for it is difficult, if not impossible), have made his report, penned his return, submitted it, received orders to repeat his visit with instructions touching its object and the course to be pursued, and retraced his steps to my domicile, travelling eight miles, and all this within the hour? Did the Chief Justice really believe this, or did he overlook the first of the two incompatible statements? But on the first occasion the Bailiff reports that he entered my domicile, a statement which is confirmed by the use of the word "*rouvrir*," which is as much as to say that on his second appearance I would not *re-open* my door, implying that I had opened it on his first visit.

The French words are "*Je me suis transporté*," they are not "*Je me suis rendu*."

Are the former synonymous with the latter? Do the first mean that he had reached my residence at between six and seven, or simply that he was on his way thither? In matters affecting liberty, and that exemption from intrusion into one's house or castle which is recognized by the constitution, no loose uncertain phrases, admitting of different interpretations, can be tolerated. Between five and six may mean within one minute or one second of six. Between six and seven may signify a moment so close upon seven that the Bailiff might be entering my door just as the clock rung seven.



If on his first visit, stated to have been between five and six, the bailiff took the pains, *as was his duty*, to examine my extensive premises to ascertain that there were no moveables that he could seize or ought to seize, some time must have been consumed. Of that he does not speak, nor does he specify the precise moment at which he set out on his return to town. He evidently did not carry a watch, for a watch which showed the true time would have enabled him to certify it, and he ought to have done so. If he did not carry a watch, on whose time-piece did he rely? Did he, per adventure, wait until he had arrived in town after six to guess at the hour?

One can understand how a Bailiff, desirous of gratifying an employer who hated a defendant, might stretch a point, and how, fearful of detection if he falsely specified a precise moment, he might take refuge in generalities and ambiguous phrases. The case in question is one in which the Judge was bound to note such considerations and probabilities, or at least possibilities.

The (Requête) petition to force open my doors was an application to the discretion of the Judge, and he might look at it from an English or a French stand-point. If he respected those rights and immunities which are recognised by English constitutional law, he would have rejected the petition. But, though he preferred the French course of proceeding, he was not precluded from using his faculties. Now, in the exercise of those faculties, looking into the Bailiff's *rubicund* countenance, and comparing the periods of the day specified in the returns, he must have concluded that the Bailiff had made a mistake, and could not have reached my house a second time *until after seven o'clock*. If the proceedings, as officially recorded, justified that inference, the Judge was bound to reject the "Requête" petition. In *favorem libertatis* the law wills that Judges should put a favorable interpretation not only on writings but on acts, and this

case—a case in which the most frightful consequences might have followed—was surely one in which the interpretation should have been favorable to the Defendant, who was not heard, nor even notified, and was being dealt with *ex parte* on a mere Bailiff's return. The Judge might also have reflected that a second visit to seize, after it had been *demonstrated by the first* that there was nothing to seize, was, to say the least, irregular and objectionable, if not absolutely illegal. But if, having left at or about six, he could lawfully return at or about seven, thus making two domiciliary visits in two successive hours, there could be no legal impediment to his persisting in that course on the ensuing day. Hence the Bailiff by making one visit every hour, from seven a.m. to seven p.m., might very considerably increase his fees and his salary as, it will be remarked, he had commenced to do, by charging double fees for the exploits which he had performed on the second of May.

But seeing that in the long days of May even a well-meaning, honest, *sobber* bailiff may arrive at a house in the country at a later hour in the evening than he calculated upon, the Chief Justice might—and, I venture to say, should—have examined the Bailiff upon oath, administered *ad hoc*, especially to ascertain if he carried a watch, and if his watch showed the true time.

I have, it is true, no political influence, and am a man of no importance—I belong to a despised *minority*—nor do I expect to be justly dealt with in the courts; but a violation of my rights, under color of law, becomes a precedent, and that precedent may be prejudicial to others. Now, there are revolvers in the country, and a Judge who irregularly orders doors to be forced open may expose the lives of innocent persons.

Cases involving such serious consequences ought scarcely to be summarily dealt with upon returns loosely certifying

the time of action to have been between two hours, when the true hour could have been, and ought to have been, accurately ascertained and positively specified. And by certifying that the time was between six and seven, the Bailiff did not, for legal purposes, affirm that it was more than one minute before seven. At seven, and after, he had no legal right or power to act, and it was his duty to prove—the Judge should have insisted on his proving—that the official act which he performed was before seven, a sufficiently long time before seven to meet the requirements of the law. It must be plain that even if he had certified that he went between the beginning of the world and seven it would not have proved how long before seven he appeared at my door.

After the publication of the foregoing statement, many, who feel as I do that Judges may use their authority to thwart or injure those whom they dislike, will ask me what I have done to the Chief Justice. Anticipating that question, I shall now say that I have not, to my knowledge, ever given him offence, nor can I imagine why he should bear me ill-will. It is true that he himself—the Chief Justice—one day told me that my enemy, Mr. William Brown, had complained that he—the Chief Justice—was unduly favorable to me. Knowing the Chief Justice's love of popularity, I felt that this event boded me no good. So it proved, for, in a suit with that Brown, the Chief Justice—who declared that, in his opinion, I ought to succeed—joined Judges Aylwin, Badgley and Berthelot in recording a Judgment against me. What is more, after, as a result of a costly appeal involving the loss of \$1000, the Judgment of those sages was reversed, he took credit, in a paragraph in the *Quebec Mercury*, for his opinion, which, it was asserted, was in accordance with the decision of the Lords of the Privy Council. I was, it is true, indignant enough, and imprudent enough, in a notice of that article, to point out the difference

between his opinion, which was *favorable* to me, and his judgment, which was *against* me, and that may have indisposed him.

In a pamphlet which originated in the mal-administration of the law and which was intended to exhibit the Judges in their true colours, I also referred to the Chief Justice. In a few words not probably all deserved but which were certainly well meant, and were intended as a warning, I ventured to suggest that he was deficient in self-reliance. That may have displeased him, and he certainly returned me the copy which I had presented to him. He so returned it to evince, as he intimated, his *respect for his friend Chief Justice Duval*, whose conduct I had arraigned. I confess that I was thunder-struck at this demonstration, but Chief Justice Meredith could spare that copy for I have been told that he possessed another.

I fear, however, that the liberty that I had taken to indicate how he might make a good Judge, thus implying that some improvement was desirable, may have offended him.

Be that as it may, though I feel bound to be respectful to the Judges, I cannot and will not carry my respect for them so far as to permit them to abuse their authority to my prejudice without remonstrating, nor will I silently bear injustice and ruin.

*Facts disclosed in an unreported case.*

## FERGUSON vs. GUGY.

Without a short preliminary statement the injustice which was inflicted on me by the decision, of which I propose to give an account, might not be quite intelligible.

In October, 1852, my neighbor Brown, instituted against me his first action. He shortly afterwards brought two others. In all three he complained of injuries which he pretended that he had suffered from my meddling with the channel of the River Beauport. In all three I appeared by Attorney—in the first, indeed, I had at least five different Attorneys. He failed in all three; and appealing, failed again. As a consequence, I ought to have been allowed fees; but three Judges of the Court of Queen's Bench, namely, Lafontaine, Aylwin, and Duval, composing the majority, decided that I should have no fees *in either of the Courts*, because, as they stated, I had appeared in person. Now, supposing that to defend oneself when attacked should be an offence, which it clearly is not, I had only appeared in person in one Court, and the punishment for that offence should have been restricted to that Court.

But Ferguson, who arrived in this country in 1854, did not reach Beauport until the month of December of that year. He then entered into my adversary's service, and in this climate he could not have seen the water flowing in the river, or the channel free from ice and snow, until the month of May, 1855. Now, he was produced by my adversary as a witness, and he described on a plan, with great circumstantiality and minuteness, the course of the River Beauport in 1852. He traced, in fact, another, and quite a different channel from that in which the water was flowing in 1854 and 1855, and he pledged himself for it "as a fact," but he was compelled to admit "that he never saw the water flowing in that channel" which he so traced.

In arguing this case it was pretended that, in commenting on that testimony, I had used a very strong term, and thereupon Ferguson immediately sued me in damages.

It thus became necessary for me to expend a large sum, not merely in preparing and filing my pleas, but in procuring copies of the evidence in question, and of divers exhibits and plans filed in the cause, all indispensable to contradict Ferguson effectually and to support my assertion.

Issue was joined ; witnesses were examined, and I *was eventually condemned to pay damages!* Without any disrespect to the Judge who so decided that case, an amiable gentleman whom I esteem, I must add that, on my appeal, his decision was reversed. Here again, without a great expenditure, I could not have defended myself ; but again, in this case, the same three Judges\* denied me the fees to which I was justly entitled.

I venture to add that in a *subsequent* case the same Court, then composed of Judges Aylwin, Meredith, Badgley, Mondelet and Berthelot (Mondelet dissenting), denied me fees on the ground that "by law and practice no fees can be allowed to counsel and attorneys in cases in which they act as attorneys of record in the cause." A judgment was, however, subsequently pronounced by Her Majesty the Queen, in Council, reversing that judgment and determining the question of the right to fees in my favor.

These facts are submitted to show how much I must have lost and how much my enemy must have been encouraged by a series of unjust and illegal decisions, by which he was enabled to worry me without incurring the penalty, the usual pecuniary penalty in the shape of costs.

In the meantime, the record in the suit brought against me by Ferguson having been returned to the Court below,

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\* Chief Justice Lafon Aine and Judges Aylwin and Duval.

the plaintiff did not see fit to proceed. Now, by law, a suit in which no step is taken during three years, is held to be abandoned.

Availing myself of that provision of the law, I lately made a motion, and that suit was thereupon dismissed by Mr. Justice Taschereau. I had, of course, claimed costs, and had placed in the hands of the Judge a decision of the Court of Queen's Bench, Appeal side, reported at length in the 8th volume of the Lower Canada Reports, page 454. Any educated man will find in that report an array of authorities and a chain of reasoning absolutely conclusive.

The article 460 of the Code of Procedure, referring to this subject, is in the following terms: "The Court, in declaring the peremption of the suit may, according to circumstances, condemn the plaintiff to pay all costs."

It must be perfectly palpable that this was a case in which I was entitled to compensation; that "circumstances" were favorable to me, and unfavorable, very unfavorable, to the plaintiff. He had sworn positively to the existence of a fact of which he could have no knowledge. Had he been believed I must have been deprived of my property, and it must have been transferred to his employer; but the Court did not believe him, and the inference from that view of his evidence, is, at the very least, that that sort of testimony and witnesses of that kind ought to be discouraged.

If the article of the Code, hereinabove cited, was intended to enable the Judge to exercise his discretion, the facts of the case from first to last all militated in my favor. The case cited in the 8 L. C. Reports was certainly not as favorable to the defendant as the present, and society has a right to expect some uniformity in the decisions of the Judges. I venture here to recapitulate: 1st. There was the evidence of Ferguson. 2nd. The necessity for multiplying witnesses to disprove it. 3rd. The danger attending the situation; the

uneasiness founded on the uncertainty touching the effect which would be produced on the judicial mind. 4th. Then the action for damages. 5th. Then the pleadings. 6th. Then the seeking for witnesses and adducing evidence. 7th. Then the argument. 8th. Then the judgment condemning me to pay damages and costs, always costs. 9th. Then the appeal, and the risk and labour attending it. 10th. Then the judgment denying me in that Court all compensation. 11th. Then my being once more brought before the Superior Court to enable the plaintiff, Ferguson, to proceed with his case if he saw fit. 12th. Then my being obliged to wait upwards of three years before I could free myself from that frightful burthen.

I cannot imagine a case in which a defendant could be or ought to be more assured of the usual compensation (in the shape of costs) for his labour. The plaintiff Ferguson having brought suit against me in April, 1859, and has thus kept me eleven years in Court. This alone is a serious evil. Yet, Mr. Justice Taschereau denied me costs, that is to say, not merely fees, as the Court of Appeals had done five times, but *actual disbursements*. Thus under his judgment I was not only deprived of all compensation for my labour, during eleven years of anxiety, but I *could not recover and have actually lost the whole amount of my disbursements, a very large sum!* This, too, is the legal result, the *result according to the law as it is administered*, of my successful resistance of an action for damages founded on my comments upon evidence, which, *had it been believed*, would have been *fatal* to me, but which, as it was not believed, I could not have stigmatized without reason!

Now the principal difficulty attending the administration of justice arises out of the frequency of perjury, and it would seem that too much could not be done to discourage the tendency of witnesses to lend themselves to either of the parties



litigant. It is a practice, I maintain, which ought to be discouraged.

Taking the liberty to compare the two cases thus brought under the reader's notice—that reported in the 8 L. C. R., page 454, and the case of Ferguson—I dare affirm that both those Judgments cannot be right or just.

Entertaining great respect for Mr. Justice Taschereau, I do not ascribe his *ruling* in favor of Ferguson to malevolence. But seeing how perfectly well aware he was not only of the previous decisions by which I had been victimized, but of their effect in nearly ruining me, and knowing *from his own Judgments* that he deemed those decisions illegal, his ruling in favor of Ferguson is perfectly inexplicable.

It may possibly be accounted for—like that other decision of Mr. Justice Stuart on the same subject—of which I complain, by the lassitude, the exhaustion, which is the necessary consequence of incessant labor.

Lastly, I respectfully submit to both those gentlemen, that they naturally expect, and receive, compensation for their labor. In their case it is called *salary*, and suffers no diminution even when they are prevented by indisposition from performing their duties, nor is it in the power of any individual or body to reduce it by one fraction. But, I too, am entitled to compensation for my labor, and though it be called fees, it is my right, just as their salary is their right—upon grounds fully as binding and as sacred. And though the Judges have the power to reduce the amount of my fees by taxation, I have a right to expect, and so has every practitioner, that the duty of taxing will be performed in a spirit of enlightened liberality based on justice and sound reasoning, and, in a Judge, the ability and the disposition to apply sound reasoning is indispensable.

Sometimes too, especially *in such cases*, even when the scales hang even, and the Judges might be indifferent, he

actuated by considerations of public policy, and among others may fitly determine such questions as that under discussion, with a view to deter men from the commission of crime, if not by imposing penalties on the guilty, at least by withholding all recompense from the guilty—at least by refraining from inflicting punishment on the innocent.

Now the Code is clearly *permissive*, the Judge might have condemned Ferguson to pay *all* costs! With submission, I repeat, that he ought to have done so, for that might have punished him, in whose conduct the whole evil, the whole expenditure, had its origin. But the Judge punished me, who am, and in this litigation have ever been, not *merely innocent* but *frightfully aggrieved*!

All which is respectfully submitted,

A. GUGY.

*Facts disclosed in an unreported case.*

BROWN,

vs.

GUGY.

I propose to cite another case in which again I have been subjected to much (by no means unavoidable) suffering.

My adversary Brown, who had been foiled in three suits which he had brought against me in this country, appealed all three and having failed again, he brought one of them before her Majesty the Queen in Her Privy Council. He was as unsuccessful in that appeal as in all the others; but within six weeks of the period at which that result became known in this country after seven Judgments had been pronounced against *him*, he instituted a fourth suit against *me*. I pleaded *Res Judicata*, and that fourth suit was indeed founded upon the same grounds exactly as the first suit which had been then recently decided in England.

This fourth suit bore the number 581. After the usual preliminaries, and after both parties had been heard, the Court deciding that this last mentioned suit, No. 581, originated in the same cause of action as the first suit which had been decided in my favor twice here and once in England, dismissed the action of the Plaintiff Brown *with costs*.

My adversary Brown *was condemned to pay costs*, that is the fact to which I desire to direct the reader's attention. The judgment was dated 4th February, 1865.

But dissatisfied with that decision he inscribed it for Revision. Here the Court was divided, one Judge being favorable to me and two against me. It was then, on the 5th of April, 1865, ordered that we should begin all over again, and so we did. This was an interlocutory order.

Having proceeded as was ordered, adduced more testimony

and labored hard, I had at length the good fortune, when the case was ripe for argument, to bring it once more before the Court. On the 19th of October, 1867, a Judgment was pronounced, which, for the second time, dismissed the Plaintiff's action, and for the second time *granted me costs*. Thus, in that cause three consecutive Judgments were pronounced, and the last was a final Judgment. My adversary, of course, appealed, but he was again unsuccessful on the merits, and again *he was condemned to pay costs*. This was the fourth Judgment, and by that decision (of the Judgment of the Court of Queen's Bench sitting in appeal) it cannot be too often repeated *my adversary Brown was condemned to pay costs!*

This subject is regulated by the Code of Procedure, Article 478, which Article as printed is in the following words:—

“The losing party must pay ALL costs, unless for special reasons the Court thinks proper to reduce them or compensate them or order otherwise.”

The rule thus by Legislative authority prescribed applies to the cause, No. 581, now in question, for the Court did *not* compensate the costs or reduce them or order otherwise!

I had succeeded, and, by Judgment dated 4th February, 1865, my adversary was *condemned to pay costs simply*.

It is true, however, that that decision was reversed by Judgment of the Court of Revision, dated 5th April following.

But by the final Judgment in the Superior Court, dated 19th October, 1867, the above mentioned decision of the Court of Revision, dated 5th April, 1865, was itself reversed, and the first Judgment, dated 4th February preceding, was in effect revived and confirmed. The Plaintiff Brown, then, whose action had been dismissed, was *condemned to pay all costs!* He was not relieved in appeal. On the contrary there he was again *condemned to pay all costs* in the following words: “Considérant que dans le dit jugement du 19 Octobre 1867, confirmé par celui du 4 Avril 1868, il a été correctement jugé en

autant que l'action du dit William Brown y est rejetée avec dépens les dits deux jugements sont confirmés, et en conséquence l'action du dit William Brown est et demeure renvoyée avec dépens contre lui en cour de premier instance et aussi ceux de cette cour."

When, however, I claimed the fee allowed by the tariff on the first Judgment, that is the Judgment dated 4th February, 1865, as well as on the second Judgment, dated 5th April, 1865, the taxing officer rejected my application.

This decision was then submitted in appeal to His Honour Mr. Justice Stuart, by whom it was confirmed.

It is but fair to that amiable and courteous gentleman that I should here state *what I understood were* the grounds of his decision.

He held that *I should have appealed* from the interlocutory order of the Court of Revision of the 5th April, 1865, vacating his own previous Judgment of the 4th February preceding.

I admit the fact, but it does not seem to me to be sufficient to justify the conclusions deduced from it by the Judge that it was lawful to withhold from me my costs.

I argued thus: admitting that the Judgment of the 5th April, 1865, was unfavorable; it was itself vacated by the final Judgment of the Superior Court, dated 19th October, 1867. Thus the original Judgment of the 4th February, 1865, was revived for *cessante causa cessat effectus*.

The Judgment of the Court of Queen's Bench, dated 19th June, 1869, dismissing the action of the Plaintiff Brown with costs, necessarily brought the case within the provision of the above cited 478th Article of the Code. The Court, as has been previously stated in an extract from the French version, "confirmed the Judgment of the Superior Court which had dismissed Brown's action with costs," and declared that action to be and remain "dismissed *with costs*"—*without limitation or reserve!* It follows, as a logical consequence under Article

478, that the Plaintiff Brown should pay *all* costs. This is all the more interesting to me because if he be not bound to pay them I must, and double the usual amount is thus involved in this question.

It is, however, perhaps necessary to dwell for a moment on the omission to appeal from the Judgment of the 5th April, 1865, to which the loss of some hundred dollars is apparently to be ascribed.

The Judgment from which it was intimated that I should have appealed was an *Interlocutory* Judgment. Now, such Judgment cannot be appealed *de plano*—nor except in the three undermentioned cases, specified in the Code, Art. No. 1116:

“ 1. When they in part decide the issues.”

“ 2. When they order the doing of anything which cannot “ be remedied by the final Judgment.”

“ 3. When they unnecessarily delay the trial of the suit.”

It will not be pretended that the Interlocutory in question decided any part of the issues—nor did it order anything which could not be rectified by the final Judgment. This latter proposition is proved by the facts that the final Judgment dismissing the action of the Plaintiff Brown was favorable to me.

Referring to the third above cited condition, I submit that the Interlocutory delayed the Judgment, it is true, but not the trial. On the contrary, the trial was instantly recommenced and proceeded without intermission until a final Judgment was a second time pronounced. It must be evident too that the attempt to appeal would have entailed considerable expense—without by any means ensuring a decision permitting the appeal. But had the permission been granted *that would have delayed the trial!*

As I write less for the profession than for laymen, I subjoin an extract from the Code, enumerating the several steps which suitors, desirous of appealing from an Inter-

locutory Judgment, must take. This is intended to prove the uncertainty attending this proceeding and the inevitable delay!

“ 1119. If the appeal is from an Interlocutory Judgment it must first be allowed by the Court of Queen’s Bench, upon a motion, supported with copies of such portions of the record as may be necessary to decide, whether the Judgment in question is susceptible of appeal, and falls within one of the cases specified in Article 1116. The motion must be made during the term next and after such rendering of the Judgment, and cannot be received afterwards; saving, however, the party’s right to urge his reasons against such Judgment, upon an appeal from or proceedings in error against the final Judgment.

“ 1120. The motion must be served upon the opposite party, and, if required, is followed by a rule, calling upon such opposite party to give his reasons against the granting of the appeal, and the service of such rule upon him has the effect of suspending all proceedings before the Court below.”

Had I pursued the course indicated in those two articles I might and, in my opinion, probably would, have been denied permission to appeal. But the article, No. 1116, is *permissive* merely, and I surely had a right to exercise my faculties to appeal or to refrain as I saw fit. Now, being sure of victory on the final contest, and feeling that by appealing from the Interlocutory I should lose time, I refrained.

Some people seem to look upon me as being unduly given to litigation, and it is supposed to be on that assumption that the Court of Appeal has given me so many tastes of its quality.

But here is a Judge, whom I hold in respect, punishing me because apparently in this case I have *not been sufficiently litigious*.

Yet I can have no redress.

A. GUGY.

*In Re*

BROWN,

PLAINTIFF,

vs.

GUGY,

DEFENDANT.

It is lawful to prefer any well-founded complaint against any public functionary. The act, indeed, is not only lawful but laudable, for it is conducive to amendment. It is the first step in the process of amendment, and to stifle such complaints would be to perpetuate wrong doing.

Under that impression I prefer the underwritten complaint against the Honorable Mr. Chief Justice Meredith. In a judgment which he wrote, which he read from the Bench, which, with his permission, I copied and printed, he expressed himself in the following words :—

“ I now pass from the wharf of the Incidental Defendant (Brown), between his two stores, to the alleged encroachment, on his part, in rear of the stone store.

“ There can be no doubt that the Incidental Defendant (Brown), in order to protect the foundations of his stone store, has placed a very large embankment of stones in the bed of the river at the rear of that store. *It is equally plain that the Plaintiff (Gugy) is entitled to indemnity for any damage done to his property by the stones so placed in the river.\**

“ Here I may observe that a distinction is to be made between the stones placed in the river and the wharf which, it is alleged, encroaches upon the river. If I were satisfied that the wharf was built in the river, so as to injure the Incidental Plaintiff (Gugy), as alleged, I would hold that it ought to be removed, for the Incidental Defendant

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\*Purposely italicised.



“(Brown) had no excuse for placing it beyond his own property ; and under such circumstances I would not allow a work illegally constructed to undermine and destroy a legally constructed wharf on the opposite side. But as regards the stones, they are necessary for the protection of the store.”

“The removal of them would be much more injurious to the Incidental Defendant (Brown) than beneficial to the Incidental Plaintiff (Gugy).”

The foregoing extracts, from a judgment absolutely intolerable, but which I shall not characterize, justify, in my apprehension, the following remarks :—

First, my wharf being “*a legally constructed wharf*” on my property, it is, as the Judge admits, “*plain*” that I am entitled to indemnity for any damage done to my property by the stones so placed by my adversary in the river.”

Here I take leave to draw a distinction which the Chief Justice overlooked, and I marvel that he did so overlook it.

It is this:—The Court of which he was the organ had jurisdiction over the past only, not over the future. That Court, it is true, granted what it called an indemnity for the past, amounting, as I affirm, to about an eighty-fifth part of the amount to which I maintain that I was entitled, and which I had claimed. But the Court could not, and did not, grant me any *prospective indemnity*. It could not, and did not, decree that my adversary should make good by future payments in money any damages which I might suffer from the date of the Judgment forward.

The Court had not that power, but it had the right, to order the immediate removal of the “*encroachment*” of which my adversary stood convicted. The immediate removal, I say, “*of the stones placed by him, as stated, in the river.*”

I had, by my action, sought for this remedy, and justly expected that it would have been granted to me ; nor will

the Judge, nor any sane man, deny that being, as he avows, entitled to indemnity for the past, I was also entitled to protection or indemnity for the future.

That, clearly, was my right ; but the Judge, having altogether overlooked that branch of the case, left me without any recourse except by action. The wrong, being a continuing evil, is either to be tamely endured or is to be abated by a series of actions.

Here I would observe that an enquiry naturally suggests itself. How many actions to obtain redress was I expected to bring—one every year, or one every month, or one every week, or one every day ?

The Judge declares that “ to protect the foundations of his store, my adversary *has placed a very large embankment of stones in the bed of the river.*” He adds “ that I am entitled to indemnity for any damage that those stones may do to my property.” He concurred, too, in a Judgment awarding me an indemnity of £45 for the past, and for the past *only*.

But, as I have shown, the Judge has not granted my conclusions claiming the removal of that “ large embankment of stones in the bed of the river.”

His reason for that denial of justice—his reason, I say, in his own language, quoted from his aforesaid written Judgment—is couched in the following words :—“ The removal of the stones (he has the courage to write and publish)—*the removal of them would be much more injurious to the Incidental Defendant (my adversary) than beneficial to the Incidental Plaintiff (me).*”

Here, then, is *something new under the sun*. The stones, it is admitted, injure me, but they are beneficial to my adversary ; and that he may thus, at my expense, enjoy a benefit, it is judicially decreed that I must submit to the wrong.

Men generally bear very stoically the wrongs inflicted on others, and even the educated minority who, using their faculties, can reason from effects to causes, will scarcely offer me any moral support, still less openly extend to me any sympathy. Nevertheless, I shall put a case.

The embankment of stones placed by my adversary in the river is, as stated by the Chief Justice, both a benefit to my adversary and an injury to me. Now, admitting that the benefit should not be very considerable, if my adversary has a right to inflict on me a wrong to enable him to reap an inconsiderable benefit at my expense, it follows *a fortiori*, that to obtain a very considerable benefit he would be entitled to inflict upon me a very much greater evil. Thus, as the possession of my whole farm would assuredly confer upon my adversary a much more considerable benefit than the protection of the foundation of his store, it would seem to follow that I must be prepared for being judicially despoiled of it, and for its being transferred to my adversary. Could I believe the law of the Chief Justice to be good law, making short work of it, I should emigrate to Kansas, or to some other country in which every man relies for his protection upon his rifle and his revolver. There, if a man can thus protect his property, he enjoys it. If he can't, he's shot, and freed, in some hastily dug hole, from such agony as that which for years the judges have inflicted on me. Such a hole, fit receptacle for so unhappy a man as I am, could be easily dug here; but, unfortunately, Quebec law don't kill outright, like a well-directed rifle bullet. I have thus, however, quoted the basis of a Judgment which, as such, may be hereafter cited against me.\* I have endured the wrong since 1850, and owing to the laws proverbial delay, have only recently obtained a decision, and such a decision!

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\* And of course against others, if it may be assumed that any other suitor can be treated as I have been.

"The removal of the stones" (the Chief Justice declares) "would be much more injurious to my adversary than beneficial to me." It is strange that the Chief Justice did not feel that those words "injurious and beneficial," in that connection, are what are called "incommensurable quantities." How much "benefit" does he hold that my enemy should reap? To how much injury to ensure that benefit can I be lawfully subjected? What is to be, in the opinion of the Chief Justice, the limit of the benefit, or the justifiable extent of the injury? Knowing that he will do me the honor to read these lines, I beg he will note that these two words involve a problem, and he is hereby earnestly invited to solve it.

*Problem.*—Given the amount of benefit which it behoves an impartial *sworn* administrator of the law to confer at my expense on my enemy, how much injury is that same impartial *sworn* administrator bound by that *same law* to inflict on me?

This is one illustration, but I can submit a plainer case.

We all know that in this community many men with fair talents and some educational advantages fall from drink to the very lowest depths. Now a sturdy beggar of the class above described may have been lounging in Court (as especially in cold weather many do) while the Chief Justice was reading that part of his judgment herein above repeatedly quoted, and our beggar being then sober may have understood the full import of the words "injurious and beneficial" as put by the Chief Justice. Guided by the light reflected from the Bench, he may have thrown himself in some lonely spot in the way of some farmer's wife returning from market.

Knowing that she had in her pocket the proceeds of her morning's sales our beggar might accost her as follows:

You have eaten—you have money, while I am starving and penniless.

Give me a dollar—it will be more beneficial to me than injurious to you.

I will not suggest the possible result of the refusal to give the dollar!

But such an interpretation of the decision of which I complain would be only logically carrying it out to its legitimate conclusions.

This section of the Dominion is in an anomalous condition. So anomalous indeed is that condition as to be perfectly unintelligible and probably incredible to those members of the Government who reside in the other Provinces. Desirous of bringing about some improvements, I shall now state more facts.

Citing the text of the same Judgment, as written by the Chief Justice, I submit the following lines:—

*Text:—*“ Jean Baptiste Bertrand, who built Brown’s wharf, swears that it was built on the bank, and Louis Auger deposes to the same effect. Both these witnesses, however, say that the present wharf is built upon the site of an old wharf. Now, although there was formerly a wharf near the wooden store there *certainly was not* (before Brown put up the wharf in question) *a wharf between the two stores*. And the fact that these two witnesses are in error as to the existence of an old wharf between the two stores detracts much from the value of the remainder of their evidence.”

I cannot, or dare not, use language sufficiently condemnatory of this euphemistic mode of speaking of manifest perjury. Hoping that the reader will bear in mind the words “*there certainly was not a wharf between the two stores*,” so thoroughly descriptive of the *conviction* of the Court, I shall now quote the evidence of Auger and Bertrand, to which those words refer.

This Auger examined on 25th June, 1866, testified as follows:—

“ Je suis entré au service du Demandeur il y a quinze ans  
“ et je suis encore à son service.”

“ Je connais le quai du Demandeur, entre le hangar de pierre  
 “ et le hangar de bois qui a été bâti par un nommé Bertrand  
 “ et quelques autres, dont les uns sont morts et les autres  
 “ absents. Je l’ai vu bâtir. Il y avait à *la même place un*  
 “ *vieux quai* bâti par Monsieur McCallum. J’ai connaissance  
 “ que les ouvriers qui faisaient le quai neuf, *ont défait le*  
 “ *vieux quai pour mettre le quai neuf à la même place.*  
 “ Ainsi le quai neuf est où était *autrefois le vieux quai.*”

“ J’ai resté au moulin en question depuis 1832 dans le  
 “ temps qu’il a été possédé par Monsieur McCallum et Mont  
 “ sieur Scott. *Le même vieux quai*, hangar et bâtisses  
 “ existaient dans le temps que je suis entré là, en mil huit  
 “ cent trente-deux.”

“ Quant *au vieux quai*, je n’ai pas connaissance quand il  
 “ a été bâti. Il *existait* en mil huit cent trente-deux, et le  
 “ quai neuf qui existe aujourd’hui *est à la même place sur*  
 “ *les mêmes fondations.*”

“ *Je dis positivement* qu’il *existait un vieux quai*, qui s’é-  
 “ tendait depuis le hangar de pierre jusqu’au hangar de bois  
 “ du long du jardin du Demandeur, dans l’année 1850,  
 “ lorsque le Demandeur a fait bâtir par Bertrand et deux  
 “ autres, le quai qui existe actuellement *sur les fondations*  
 “ *du dit vieux quai.* J’ai été voir les ouvriers qui travail-  
 “ laient et je les ai vu poser le quai neuf qui existe actuelle-  
 “ ment *exactement sur les fondations du vieux quai*, de sorte  
 “ que le quai qui existe actuellement a la même forme que le  
 “ dit ancien quai.”

“ Un nommé Chamberland, qui est mort, a travaillé avec  
 “ Bertrand et un nommé Langevin, qui est maintenant éloi-  
 “ gné.” \*

Examined again in the same cause on the 30th March,

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\* This Langevin, whose absence is thus positively affirmed, was examined as a witness in this very cause.

1867, the same Louis Auger adverted to the same subject in the following words:—

“ Je suis meunier du Demandeur, et suis a son service comme tel depuis dix-sept ans. Je connais le quai du Demandeur *entre son hangar de pierre et son hangar de bois*. Je l’ai vu bâtir, *à la même place que celui il où y avait un vieux quai*, et le nouveau a été bâti *à la même place que l’ancien.*”

“ J’étais au moulin du temps de M. Scott, et j’ai vu *le dit vieux quai alors*, il y avait peut-être cinquante ans qu’il avait été bâti par M. McCallum, peut-être soixante ans, peut être cent, je n’en sais rien. On entendait dire dans ce temps-là *que ce vieux quai* avait été bâti par le dit M. McCallum.”

“ J’ai passé ma première année chez le Demandeur avant que le nouveau quai fut entrepris, et pendant cette année *j’y ai vu l’ancien quai.*”

“ Quand ce nouveau quai a été bâti on a mis de la pierre dedans, qui a été apporté en charrette, mais je ne sais pas combien de voyages.”

Bertrand, to whom the Chief Justice has also referred by name, testified on the 25th June, 1866, as follows :—

“ J’ai fait un quai pour le Demandeur du côté sud-ouest de la rivière Beauport. Ce quai est le quai qui part du hangar de pierre et descend en bas vers le sud, jusqu’au bout sud du hangar en bois du Demandeur, qui est bâti sur le même côté de la rivière.

“ J’ai remarqué *qu’il y avait du bois*, qui avait l’air d’un quai qui avait été bâti là auparavant. *J’ai démanché ce vieux bois*, j’ai posé le quai neuf sur la même place, et ainsi la ligne du quai était la même ligne *de l’ancien quai que j’ai démanché.*

“ Quand j’ai bâti le quai du Demandeur, depuis le hangar de pierre jusqu’au hangar de bois, je n’ai pas empiété sur

“ le chenail de la rivière. *J'ai été les fondations du vieux quai et j'ai mis celles du quai neuf à la même place.*”

“ Le Demandeur nous a dit: “ *démancez le vieux quai que voilà, et mettez le nouveau à sa place.*”

“ Dans tous les cas, *je dis positivement qu'il y avait un vieux quai depuis le hangard de pierre à aller au hangard de bois sur la même ligne que le quai que j'ai bâti, lequel est encore là à la même place.*”

“ Il y a 17 ou 18 ans que je suis dans Beauport. En arrivant je suis entré au service du demandeur. A présent qu'on me nomme le nom d'Etienne Langevin, je me souviens qu'il était un des hommes qui a travaillé avec moi au quai en question. Le Demandeur venait faire un tour au quai, pendant que nous bâtions, tous les jours.”

The Chief Justice has named only those two witnesses, but there were three others who testified to the same effect.

The three latter like the two first were not believed and the citation of their evidence, if not indispensable, will certainly serve my present purpose.

Benjamin Blais, produced by the Plaintiff, examined 14th May, 1866, aged 60, deposes:—

“ Je répète que je connais cette rivière (savoir la dite rivière Beauport) depuis que j'ai l'âge de quatorze ans. *Durant tout ce temps-là j'ai vu un quai entre le hangard de pierre de Monsieur Brown et son hangard de bois lequel y est encore.*”

“ J'ai eu quatorze ans en mil huit cent vingt; donc *je connais la rivière Beauport depuis 1820.*”

“ Je prétends que la bâtisse des quais a changé la hauteur de l'eau qui n'est jamais aussi haute dans le chenal qu'elle était avant la bâtisse des quais.”

Louis Larose, produced by the Plaintiff, examined on the 15th May, 1866, aged 50, deposes:—

“ Pendant que je mesurais, comme je viens de le dire, la



“ largeur de la rivière, j'étais placé sur le quai du Demandeur, Monsieur Brown, qui avait eu le soin d'être présent avec moi. Il ne m'a pas dit que son quai était un empiètement sur la rivière.”

“ Je sais que ce quai là est bien ancien, que ce n'est pas lui qui l'a fait, par conséquent, si ce quai est un empiètement dans la rivière, ce n'est pas la faute du Demandeur. Ce quai là suit bien la ligne du hangard auquel il commence et descend vers le hangard.”

Antoine Parent, produced by Plaintiff, examined on 27th June, 1866, aged 62, deposes:—

“ Quand j'ai vu cette rivière Beauport pour la première fois je pouvais avoir une quinzaine d'années.”

“ Je connais le quai du Demandeur qui s'étend depuis le hangard de pierre vers le sud-ouest. Ce quai a toujours existé là : Je ne l'ai pas vu bâtir ; mais il a été bâti avant moi. Un quai a toujours existé là depuis que je connais la place. Il est vieux, vieux, vieux.”

The intelligent reader will have remarked how precise, how particular, how positive both Auger and Bertrand were in describing the *old wharf* upon the site of which they pretended that the new wharf was built. The Court, however, adjudge their evidence to be false evidence. Thomas Blais, Larose and Parent going further, positively swear, that the new wharf is not a new wharf, but a very old wharf! That evidence, too, was, according to the testimony of the Chief Justice, held to be false, for he declares that “ *there certainly was not*” such a wharf.

But wilfully giving false evidence upon oath is a very serious offence. The Chief Justice, however, mildly and indulgently remarks “ that that merely detracts from the value of the remainder of their evidence !”

The sort of omnipotence which could command such witnessses and adduce such evidence, and its effect not upon me

alone but on society at large seems to have been altogether overlooked, and the Court lost an admirable opportunity for making a great example.

I venture to add that that sort of laxity detracts much from the value of real property, for whosoever holds real property is at the mercy of such witnesses ; nor is it surprising that prudent men prefer investing in such securities, (Bank Stock for instance ), as cannot be wrested from the holder by such evidence. Nevertheless, it would be sound policy, it would greatly conduce to the public prosperity, were men of some education induced or encouraged to settle in the country.

I now venture to submit some of the impressions produced upon my mind by the facts hereinabove set forth :—

1. The five above-named witnesses, whose positive testimony the Court did not believe, should have been delivered over by the Court to the Attorney-General, to be tried at *the public expense* for their offences.

2. The Plaintiff, who brought them up to support his pretensions, attaching so much importance to their evidence as to examine one of them twice, the Plaintiff, I say, knew what they would swear and *intended that they should depose what they did depose* ; but he could not and did not support their testimony when he was himself examined on oath.

I maintain then, that instead of being treated not merely with great indulgence, but with delicacy and even tenderness, he too should have been brought before a jury.

3. At the least, the very least, the rule, *falsum in uno falsum in omnibus* should have been applied to his case.

4. I, too, was supposed to know what my witnessess would testify, and, as I produced them to testify to the truth, as also they were honest, veracious, worthy men, I am, I must say, indignant at the comparative treatment which they and I have received at the hands of the Court.

5. The Court must have understood that the evidence

adduced by the Plaintiff filled me with dismay, and that the necessity for contradicting it must have imposed on me a most laborious, a most painful, expensive and long continued task, in searching for witnesses, acquainted with the locality, sufficiently respectable and intelligent to ensure their testifying with effect. The Court believed my witnesses—surely—surely then as my enemy was the aggressor, an aggressor supported by false witnesses, surely, as Judge Mondelet maintained, I was entitled to compensation. I preferred this claim with greater confidence because the decision in the suit in question had been preceded by seven decisions all in my favor, one of which had been pronounced by the Privy Council, and because the controversy caused by my enemy is one which has now been enduring for upwards of seventeen years.

There is in the French law a process bearing some analogy to trial by jury. It is the reference to experts prescribed in the 322nd article of the Code, in the following terms :

“Whenever the facts in contestation between the parties can only be verified by view of the object or premises, or *whenever the evidence produced by each party is contradictory*, or when the *nature of the contest requires it*, the Court may, of its own accord or upon application of either party, order the facts to be verified by experts, and persons skilled in the matter.

“The order for experts must specify clearly and distinctly the matter to be verified.”

The foregoing quotation is intended as an introduction to another branch of the subject. I had alleged that the wharf which my enemy erected in 1850, (the wharf between the two stores spoken of by the Chief Justice) was an encroachment of upwards of 20 feet to my prejudice. *I now affirm that it is so!* The late Mr. John Racey swore to that fact. In support of that allegation I produced many witnesses.

Among others Mr. McCallum, Mr. Malone, Mr. Anderson, and Messieurs Adam, father and son, Messieurs Poulin, Veilleux, Barbeau, Grenier and also Etienne Langevin, who was one of the builders of the wharf.

To use the very words of the Chief Justice, "this was "much the most important part of the case."

Admitting that there might be (though in reality there was not) some "*contradictory evidence*," such was the number and *respectability* of my witnesses that I was entitled to a reference to experts. Were there no more in the case than the incredible testimony of the five witnesses above named, who swore so positively and were *not* believed, there was enough to justify doubts unfavorable to my adversary. But I produced a plan of the premises—a plan originally furnished and certified to be correct by *himself*—which plan supported my pretensions.

These were briefly the facts—there was the law, and I moved specifically for a reference to experts.

No kind of Notice was ever taken of that application!

Thus contemptuously treated in this most "important" particular, I naturally complain. But I had claimed compensation in damages. Now, Judge Mondelet was the only Judge who referred to the subject. Here, again, the Chief Justice shrouded himself in contemptuous silence.

This is the eighteenth "winter of my discontent," or persecution,—a period exceeding a fourth of the ordinary span. And, though it behoves the Judges to discourage and shorten law suits, that in which I have been thus engaged has been prolonged by such decisions and such reasoning as is hereinabove described.

Had the decision of which I complain been confirmed in appeal it might have been productive of much mischief. For instance, desirous of "elbow room," one proprietor, a popular man, might insist on the removal of the fence or wall dividing his lot from that of his neighbour, an unpopular

fellow. The former could, in the language of the Chief Justice, allege that the desired removal would be more *beneficial* to him than *injurious* to his neighbour. Pretensions founded on such a doctrine, it must be quite evident, would afford pretexts for much litigation and the consequent frequent exercise of judicial discretion or preference—a result to be much deprecated.

I do not accuse the Chief Justice of being actuated by any desire to widen the limits within which judicial discretion is confined and ought to be confined. But that decision must have produced some effect upon the mind of my adversary, as it did on mine. Following, as it did, those other decisions, which decreed that, even when successful, I should *not* be entitled to *any compensation for my labor*, while, when I failed, he was always, *by the express terms* of each Judgment, enabled to exact considerable sums from me, that decision must have convinced or persuaded him that the Court intended to favor and enrich him at my expense. I speak here only of his being, by the terms of several successive Judgments, exempted from the payment of costs, that is, exempted from making me any kind of compensation for my labor—*my mere labor*—irrespective of the torture which he has inflicted on me during upwards of seventeen years.

Those decisions, granting to him what was denied to me, were certainly full of significance, and the persistence of my rich implacable enemy in persecuting me for upwards of seventeen years is undoubtedly to be ascribed to their influence upon his mind. In all cases of prolonged litigation wealth tells, and he might well hope, as he evidently did hope, and probably does still hope, to effect my ruin.\*

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\*By the law of the Province of Quebec, whosoever as Plaintiff issuing a writ of execution, brings to Sheriff's sale the real property of a Defendant, (he Plaintiff) is not held to pay the purchase money. He satisfies the law if he gives security to pay when called upon. Thus, if my

I avail myself of this opportunity to reiterate, to press my claim upon the Judges Aylwin, Duval, Meredith, Badgley, Berthelot, as well as upon the representatives of the late Chief Justice Lafontaine, to make good the amount of which they unjustly and unjustifiably despoiled me. They are said to administer the law—the mere vehicle by means of which justice is made to approach and reach individuals ; but, the *law cannot be made to reach them*. Nevertheless, they are all well aware of the straits to which I have been reduced by the costs of this long litigation and the expenses of my voyages to Europe. They might, therefore, place themselves upon a pinnacle and become objects of veneration through all time were they voluntarily to do justice—to refund the amounts to which I am entitled, to redress the wrong which they have committed.

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enemy, who acquired claims upon me by buying my debts, upon which claims he sued me, had obtained and executed but one Judgment against me, he could in due course have seized and brought to Sheriff's sale my real estate. As it adjoins his and is besides very beautiful and very valuable, it would not only have suited him, but, as Plaintiff, he could have bought it cheap. Thus every other bidder would know that he must immediately pay the purchase money in *cash, in cash !* But my adversary would feel that he need not disburse a fraction. This would give the latter a great advantage over every competitor. But he need never pay until my affairs being settled by judicial authority, each of my creditors could lawfully exact from the Sheriff the amount due in the order of his hypothecary claim. This is a sort of chancery process, sometimes extending over years. But that is not all ; some of my creditors less wealthy than that well known bill discounter, would be open to an offer on his part to buy their claims ; and the Plaintiff, my adversary, would buy at a discount *proportioned to the necessities of those with whom he had to deal !* Again, when representing another creditor, he could in the name of that creditor adopt proceedings intended to retard the settlement ; during all which time he would dispose of the estate which he had bought as he saw fit, and also use the purchase money without paying any interest. These are some of the fore-runners of ruin brought about by means of the law.

My adversary having, no doubt, assumed that those Judges were inimical to me, cannot be willing, cannot even be suspected of a disposition to make peace. Our differences, therefore, can never be accommodated, for it requires two to make a bargain.

They would, however, they must, have been long since accommodated, had the Court enforced the rule "*interest reipublicæ ut sit finis litium*" applying it not to me, the victim, but to my adversary, the aggressor!

As Aristides, being unpopular, cheerfully conducted to his own banishment, so do I (without instituting any comparison) cheerfully admit my unpopularity.

But while wealth is a source of popularity, or at least of power, poverty is never pardoned, and the Judgments of which I complain have reduced me to comparative poverty. Then, detesting spirits, abominating tobacco, having domestic tastes, unfit for bar-room life, unable to be all things to all men, unwilling to make and break promises at pleasure, incapable of servility or adulation, altogether deficient in the Macnabbish accomplishments by which political eminence, power and emolument are achieved or obtained, I doubtless deserve to be unpopular.

These defects, however, have never been brought under the notice of the Courts by any plea.

They therefore were not matters over which they had jurisdiction.

A. GUGY.

Quebec, 19th March, 1870.

The relation of the foregoing facts, which has now attained the dignity of a pamphlet, which has been introduced by a preface, cannot be suitably closed without a

### CONCLUSION.

This publication has been confined to cases in which I was personally concerned,—not merely to prove that I have been throughout unjustly dealt with—but because I could vouch for the truth of the statements thus brought under the notice of the public.

Without residing sometime in the Province of Quebec, and especially in what may be called the *French quarter*, no man can form a just estimate of the evils inseparable from a system in which the Judges decide all questions of fact without the intervention of a Jury:—in which two nationalities contend, two languages, two religions prevail; and in which the greater part of the officials is composed of individuals drawn from a French majority, holding itself bound to avenge what they consider a century of injustice and wrong.

Were the fittest men selected for the Judicial Bench, (and there, doubtless, are some men of both origins who are fit), the evils of which I complain would probably be lessened. But men wholly incompetent\* have been notoriously preferred.

Hence the reader will understand why this pamphlet could not be dedicated to the Minister of Justice, a person who has turned a deaf ear to the formal complaints which I have addressed to him. Whether the efficiency or inefficiency of the Members of his department was to him a matter of indifference, or whether he was wheedled into inactivity, it is quite certain that “*he who permits oppression shares the crime.*”

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\* This remark does not apply to the three Judges of the *Superior Court* sitting in the city of Quebec.



The habits and the tastes of a private individual, however bestial, affect only his family, or at most a small circle around him.

But the vices of a Minister, on whom the choice of subordinates and the fate of millions depend, are matters of national concern. Should such a one be addicted to drink he unavoidably becomes the protector of all drunken officials, but especially of those who belong to the department of which he is the head. But if he have also been a Squire of Dames he would naturally become the patron of any liberal official who might depend on the possession of an attractive help-mate, disposed to please.\*

Impelled by the infliction of long continued injustice, I proclaim my disgust for the mawkish illogical sentimentality which affects sympathy for indisposition, which is the consequence of vice.

When instead of stigmatising the cause society affects to lament the effect, no amendment can follow, nor can the evils incident to a bad example be arrested. This man, the influence of whose career is sufficient to neutralize twenty temperance societies, is, however, struck down at a moment at which the country is a prey to great dangers coupled with a terrible indignity, and though gorged with wealth and distinctions he is absolutely powerless. In this, then, reflecting men and well disposed youth may admit that there is a punishment and a lesson.

As in the material world explosions and collisions with all their frightful consequences, can always be traced to the incompetence, the inebriety, or carelessness of some enginemen, so the evils incident to such litigation as I have been involved in,

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\* In January, 1868, James Ryan—a quondam messenger of the Executive Council—published a pamphlet at Toronto. It contains some spicy and suggestive statements.

will, on enquiry, be found to have originated in the inefficiency, the bad habits, or indifference of some functionary. Though not so palpable, the relation between cause and effect in the last case is quite as real as in the first. It is less visible only because complaints of social wrong are invariably overlooked. In such cases the assailants are few, faint-hearted and without cohesion, while the whole mob of officials resist desperately as one man.—Society too always insists on ascertaining the cause of railway catastrophies—but in cases of social wrong, while sympathy is withheld from the sufferer, the whole official class is <sup>ever</sup> interested and active in stifling enquiry.

Having for years pondered in solitude and want <sup>upon</sup> ~~from~~ this condition of things, I have arrived at the conclusion that there are worse modes of extinction than death by a sudden railway smash.

A. GUGY.

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